IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MR. JUSTICE S.K.KRISHNAN

Habeas Corpus Petition No.1182 of 2006

Roja Begam .. Petitioner

vs.

1. State of Tamilnadu,
rep. by Secretary to Govt.,
Public (SC) Department,
Fort St. George, Chennai -9.

2. Union of India,
rep. by Secretary to Government,
Ministry of Finance Department,
Department of Revenue,
New Delhi. .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India, calling for the records of the first respondent made in GO.SR.1/828-3/2006 Public (SC) Department dated 16.10.2006, quash the same and to produce the detenu before this Court and set at liberty J. Mohammed Farook son of Jinnah, now detained in Central Prison, Chennai, under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

For petitioner : Mr. B.Kumar, SC
for Mr. S.Ramachandran
For respondents : Mr. M.Babu Muthu Meeran
Addl. Public Prosecutor -R1
Mr. P.Kumaresan, Addl. Central
Govt. Standing Counsel - R2

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O R D E R
(Made by P.K.MISRA, J.)

Heard Mr. B. Kumar, learned senior counsel appearing for the petitioner and Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the first respondent and Mr. P.Kumaresan, learned Additional Central Government Standing Counsel for the second respondent.

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2. The order of detention dated 16.10.2006 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act is in challenge in this Habeas Corpus Petition. The brief facts as gleaned from the grounds of detention are as follows:

On 23.9.2006, the detenu arrived at Anna International Airport, Chennai from Singapore and by going through the red channel, he declared the goods valued at Rs.1,00,000/-. The goods consisted of Panasonic Digital Video Cameras, Panasonic Projector as well as certain automobile parts. The Customs Authorities DRI Officers intercepted the detenu at the red channel and calculated the value of the goods at Rs.6,19,320/-. In the grounds of detention para (ii), it is specifically stated that "the total value of the above said goods was arrived at Rs.6,19,320/- with the assistance of the Customs Officers, internet and on market enquiries and the DRI Officers seized them under the said mahazar on the reasonable belief that the same were liable to be confiscation under the Customs Act, 1962 since the same were in trade quantity and therefore not a bonafide passenger baggage and you have not declared some of the goods and under-declared the values of declared goods.

3. On 28.9.2006 a letter was sent on behalf of the detenu to the Chief Commissioner of Customs, Chennai. In such letter, the detenu had retracted the statement and the valuation was also specifically questioned and certain details were furnished with reference to the previous assessment orders which indicated about the lower valuation in respect of some of the articles.

4. After the detention order was passed, the detenu made a representation wherein he specifically requested for furnishing documents pertaining to the valuation. However, such representation was rejected on 20.11.2006, indicating that it was not necessary to furnish such materials, as all the materials required to be furnished had already been furnished.

5. In the above background, the learned counsel for the petitioner has submitted that since the detaining authority had arrived at a particular valuation with the assistance of the Customs Officers, internet and on market enquiries, it was incumbent upon the authorities to furnish the copies of such materials, as such materials must be taken to be relied upon materials and non-furnishing of such materials violates the fundamental right guaranteed under Article 22(5) of the Constitution of India. In this connection, it is further submitted that the materials were also not furnished even after a specific request was made in the representation. In such a case, it would amount to non supply of relevant materials depriving the detenu the opportunity of making an effective representation and therefore, it can be also said Article 22(5) has been violated.

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6. Apart from the above, the learned counsel for the petitioner submitted that the detenu had retracted from certain statement and had also questioned the valuation by writing a letter to the Chief Commissioner of Customs of Chennai. Such communication being relevant document should have been placed before the detaining authority. It is further submitted that in the representation the detenu had also furnished copies of previous assessment orders in respect of another passenger. However, while considering the representation, this aspect has also not been considered.

7. So far as the first aspect is concerned, it is evident that the detaining authority has arrived at the valuation "with the assistance of the Customs Officers, internet and on market enquiries". If the grounds of detention are taken into account, it is obvious such materials are relied upon materials and therefore such materials have to be furnished to the detenu. Under Article 22(5) the duty to furnish the copies of the materials relied upon in the grounds of detention has been recognised as early as in the decision reported in 1980 SC 1983 (Icchu Devi vs. Union of India), which has been subsequently followed in 1981 SC 431 (Shalini Soni vs. Union of India). Similarly in AIR 1999 SC 618 (Powanammal vs. State of Tamilnadu), it has been emphasised that a relied upon document must be furnished to the detenu as per the right available under Article 22(5) and non furnishing of such document would have the effect of the vitiating the order of detention and it is not necessary for the detenu to plead and prove regarding any prejudice. Even assuming that the non furnishing of such relied upon documents in the order of detention did not have the effect of vitiating the order of detention, the detenu in his representation had specifically asked for the basis of such valuation and had requested for furnishing copies thereof and yet such representation was mechanically rejected by stating that it was not necessary to supply those materials. In such an event, it can be concluded that the detenu was obviously prejudiced as he would not be in a position to challenge the basis of the valuation. It cannot be assumed that the question of valuation of such articles has no relevance. If the valuation appears to be less the detaining authority while considering the question of detention and exercising his subjective satisfaction may not think of passing any order of detention and on the other hand, if the value of the materials is very high, the detaining authority may in his subjective satisfaction decide to pass an order of detention. As a matter of fact, in several unreported decisions of this Court dated 9.3.2007 in H.C.P.No.1118 of 2006 and 23.3.2007 in H.C.P.No.1153 of 2006, it has been clearly stated that non-furnishing the basis of such valuation specifically relied upon in the grounds of detention would have the effect vitiating the order of detention. In our considered view, the ratio of the said decisions, to which one of us (P.K.Misra,J.) was a party, is squarely applicable.

8. The learned Additional Public Prosecutor for the first respondent submitted that those decisions are not applicable to the facts of the

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present case and on the other hand, there are several other decisions of this Court which had taken a different view. In support of such contention, the learned counsel for the respondent has placed reliance upon an unreported decision of this Court in H.C.P.No.1126 of 2005 (Rizwana Ziyath vs. State of Tamilnadu and Union of India) dated 15.2.2006.

9. We have carefully gone through the above decision. In the said case, the petitioner was challenging the basis of valuation. The Division Bench observed that it is not for the High Court to consider sitting in appeal over the basis of valuation. The question specifically raised now viz., that the materials relating to the valuation specifically relied upon by the detaining authority had not been furnished and therefore, there was a violation of Article 22(5) and the detenu had been deprived of making an effective representation was not considered in the said decision. Similarly, the decision of the Supreme Court reported in Ibrahim Nazeer v. State of Tamil Nadu, reported in 2006 Crl. L. J. 3632 relied upon by the learned Additional Public Prosecutor is equally not applicable. In the said decision, this specific question was neither raised nor had been answered even indirectly. On the other hand, the only question raised in the appeal was that the High Court was not justified in holding that the Detaining Authority's view about imminent possibility of detenu coming out of bail was correct or not. We fail to see how the ratio of the said decision can be made applicable to the present case.

10. The other contention raised by the learned counsel for the petitioner also has sufficient force. Even before the order of detention, the detenu had retracted the confession and the basis of valuation had been challenged in the letter written to the Chief Commissioner of Customs House. If such communication would have been placed before the Detaining Authority, he could have considered the effect of the same. Therefore, non placing of such communication has the effect of vitiating his subjective satisfaction.

11. The other contention of the learned counsel for the petitioner is to the effect that the representation has been mechanically rejected without serious attention being devoted to it. Such contention is also correct. In such representation, specifically the basis of the valuation had been challenged and also he had requested for furnishing copies of such relied upon documents. Moreover, he had also enclosed copies of previous assessment orders. Without adverting at all to these aspects, such representation has been mechanically rejected. It has been held by a Division Bench of this Court in Khathija Beevi v. State, reported in 2006 (2) M.L.J. (Crl.) 487, after referring to several decisions of the Supreme Court, that the representation made on behalf of the detenu is required to be considered with all seriousness and it should not be rejected in a mechanical manner. We are in respectful agreement with the views expressed in such decision.

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12. For the aforesaid reasons, we are constrained to quash the impugned order of detention and direct that the detenu shall be released forthwith unless his presence is required in connection with any other case.

13. The orders of detention are being passed without sufficient attention being bestowed. While hearing of this case was going on, we specifically asked the counsel for the State as to whether there is any material in support of the conclusion that the valuation had been fixed on the advise of the Customs Officers, internet and market research and the learned counsel for the State stated that apart from the materials included in the booklet, there were no other materials. In other words, it is apparent that even though such materials were not there, there has been a mechanical reflection of such aspects, which would clearly indicate about the non application of mind. It is hoped and trusted in future the authorities before affecting the valuable fundamental right of a citizen under Article 21 viz., the liberty of a citizen, would bestow more attention.

The habeas corpus petition is accordingly allowed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. Secretary to Govt.,
   State of Tamilnadu,
   Public (SC) Department,
   Fort St. George, Chennai -9.
2. Secretary to Government,
   Union of India,
   Ministry of Finance Department,
   Department of Revenue,
   New Delhi.
3. The Public Prosecutor,
   High Court, Madras.
4. The Superintendent,
   Central Prison, Chennai.

H.C.P.No.1182 of 2006

TEJ(CO)
RVL 23.05.2007

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